



RE: Filing by email under SEA 67 [P.L. 32-2011]

Dear Counsel:

This notice is posted as a courtesy to attorneys who have practiced before the Natural Resources Commission or who have had other contact with the Commission's Division of Hearings, which suggests you or members of your firm may practice before us in the near future. We understand that many of you will already be aware of the referenced legislative change, but for those who may not, the intention is to help avoid what could be an unpleasant surprise. Please share the information with others who may have an interest.

Since 1996, the Commission has authorized the use of email for filing pleadings and documents under IC 4-21.5 (sometimes referred to as the "Administrative Orders and Procedures Act" or "AOPA"). Most state agencies have not authorized the use of email for filings under AOPA.

The Indiana General Assembly has amended AOPA at P.L. 32-2011 to authorize the use of email but with an important limitation. Email cannot be used for the initial filing under IC 4-21.5-3. SECTION 1 of the legislation provides in part:

SECTION 1. IC 4-21.5-3-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1. (a) This section applies to:

- (1) the giving of any notice;
- (2) the service of any motion, ruling, order, or other filed item; or
- (3) the filing of any document with the ultimate authority;

in an administrative proceeding under this article.

(b) Except as **provided in subsection (c) or as** otherwise provided by law, a person shall serve papers by:

- (1) United States mail; or**
- (2) personal service;**
- (3) electronic mail; or**
- (4) any other method approved by the Indiana Rules of Trial Procedure.**

(c) The following shall be served by United States mail or personal service:

- (1) The initial notice of a determination under section 4, 5, or 6 of this chapter.**
- (2) A petition for review of an agency action under section 7 of this chapter.**
- (3) A complaint under section 8 of this chapter.**

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This legislative change will accommodate the broad and uniform use of email for service before state agencies.

One important consequence for practice before the Commission, however, is that the use of email for the circumstances described in IC 4-21.5-3-1(c) is now precluded by AOPA. As a consequence, the Commission rule with respect to email is being modified to recognize the subsection (c) exception. 312 IAC 3-1-7(b) identifies methods for filing a pleading or document with the Commission. 312 IAC 3-1-7(b)(6) would be modified to read: "**Except as required by IC 4-21.5-3-1(c)**, electronic mail."

We'd like to offer a final thought. The Commission provides email updates to persons who subscribe to a free online service. For example, the information in this email will be provided to subscribers. Also included is information pertaining to Commission meetings, AOPA Committee meetings, ALJ decisions, judicial reviews, and similar matters. For additional information, please check the Commission's homepage at www.in.gov/nrc/.

Please let us know if you have questions or comments.

Thank you.

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